

Appendix A

Application of Section 1500 in the Court of Federal Claims: 2000-2012¹

Case	Transferred	Survived (Diff. Facts)	Survived (Diff. Relief)	Survived (Order of Filing)	Dismissed on § 1500
2012					
Crow Creek Sioux Tribe v. United States, No. 05-1383L, 2012 WL 762592					X
Starr Int'l Co., Inc. v. United States, No. 11-779C, 106 Fed. Cl. 50				X	
Halim v. United States, No. 12-5C, 2012 WL 4356211	X			X	
Kenney Orthopedic, LLC v. United States, No. 11-502C, 2012 WL 4963241				X	
Jackson v. United States, No. 11-671L, 2012 WL 5873669	X				X
The Warren Trust and the Marietta Trust v. United States, No. 10-06L, 2010 WL 5984588				X	
Kingman Reef Atoll Investments, L.L.C. v. United States, No. 06-828L, 103 Fed. Cl. 660 ²					X

¹ Includes all cases appearing in Lexis or Westlaw in which the Court of Federal Claims (“CFC”) adjudicated a motion to dismiss under 28 U.S.C. § 1500. Cases not reported in the Lexis or Westlaw database do not appear in this data set. Recall that the Supreme Court’s opinion in *United States v. Tohono O’odham Nation*, 131 S. Ct. 1723 (2011) eliminated the possibility of surviving a motion to dismiss under Section 1500 on the basis of differences in the relief sought.

² In *Kingman Reef*, the CFC held that Section 1500 required dismissal of one plaintiff’s claims, but did not apply as to another plaintiff not involved in the parallel district court litigation.

Case	Transferred	Survived (Diff. Facts)	Survived (Diff. Relief)	Survived (Order of Filing)	Dismissed on § 1500
United Keetoowah Band of Cherokee Indians in Oklahoma v. United States, No. 06-936L, 104 Fed. Cl. 180 ³				X	
Otoe-Missouria Tribe of Indians, Okla. v. United States, No. 06-937L, 105 Fed. Cl. 136				X	
Goodeagle v. United States, No. 11-582L, 105 Fed. Cl. 164					X
Pellegrini v. United States, No. 11-224L, 103 Fed. Cl. 47					X
Kaw Nation of Oklahoma v. United States, No. 06-934L, 103 Fed. Cl. 613				X	
Petro-Hunt, L.L.C. v. United States, No. 00-512L, 105 Fed. Cl. 37 ⁴		X			X
2012 TOTALS	2	1	0	7	6
2011					
Jenson v. United States, No. 10-598C, 2011 U.S. Claims LEXIS 1201					X
Low v. United States, No. 10-811C, 2011 WL 2160880					X

³ This case appears twice in this chart because the government filed a renewed motion to dismiss under Section 1500 on the basis of the Supreme Court's 2011 decision in *Tohono*. In both instances, the claims survived dismissal due to the order of filing.

⁴ Plaintiff's temporary takings claim was dismissed on Section 1500, but its judicial takings claim survived dismissal due to differences in operative facts. The CFC subsequently denied both Plaintiff's, *see* 105 Fed. Cl. 132 (May 30, 2012), and Defendant's, *see* 2013 U.S. Claims LEXIS 3 (Jan. 8, 2013), motions for reconsideration of the dismissal order.

Case	Transferred	Survived (Diff. Facts)	Survived (Diff. Relief)	Survived (Order of Filing)	Dismissed on § 1500
Red Cliff Bank of Lake Superior Chippewa Indians v. United States, No. 06-923L, 2011 WL 8605847					X
Stillaguamish Tribe of Indians v. United States, No. 06-916L, 2011 WL 4792908					X
Cheyenne River Sioux Tribe v. United States, No. 06-915L, 2011 WL 4792905					X
Oglala Sioux Tribe v. United States, No. 05-1378L, 2011 WL 8776378					X
Confederated Tribes of the Goshute Reservation v. United States, No. 06-912L, 2011 WL 6148578					X
Central Pines Land Co. v. United States, No. 98-314L, 99 Fed. Cl. 394 ⁵					X
Western Management, Inc. v. United States, No. 08-116T, 101 Fed. Cl. 105					X
Lummi Tribe of Lummi Reservation v. United States, No. 08-848C, 99 Fed. Cl. 584					X
Omaha Tribe of Nebraska v. United States, No. 06-911L, 102 Fed. Cl. 377					X
Prairie Band of Potawatomi Indians v. United States, No. 06-921L, 101 Fed. Cl. 632					X
Lower Brule Sioux Tribe v. United States, No. 06-922L, 102 Fed. Cl. 421					X

⁵ This decision was affirmed, *see* 697 F.3d 1360 (Fed. Cir. 2012).

Case	Transferred	Survived (Diff. Facts)	Survived (Diff. Relief)	Survived (Order of Filing)	Dismissed on § 1500
Yakama Nation Housing Authority v. United States, No. 08-839C, 102 Fed. Cl. 478		X		X	
Northwestern Band of Shoshone v. United States, No. 06-914L, 102 Fed. Cl. 427					X
Capelouto v. United States, No. 10-823C, 99 Fed. Cl. 682					X
Stockton East Water Dist. v. United States, No. 04-541L, 101 Fed. Cl. 352 ⁶	X	X			X
Iowa Tribe of Kansas and Nebraska v. United States, No. 06-920L, 101 Fed. Cl. 481					X
Muscogee (Creek) Nation of Oklahoma v. United States, No. 06-918L, 103 Fed. Cl. 210					X
Rosebud Sioux Tribe v. United States, No. 06-924L, 102 Fed. Cl. 429					X
Tallacus v. United States, No. 10-311C, 99 Fed. Cl. 235					X
Nez Perce Tribe v. United States, No. 06-910L, 101 Fed. Cl. 139 ⁷				X	
Brandt v. United States, No. 09-265L, 102 Fed. Cl. 72					X
Coeur d'Alene Tribe v. United States, No. 06-940L, 102 Fed. Cl. 17					X

⁶ The government's motion to dismiss was granted with respect to the plaintiff's takings claim, *see* 101 Fed. Cl. at 359, but denied with respect to certain of the plaintiff's breach of contract claims, *see id.* at 361-62.

⁷ This case appears twice in this chart because the government filed a renewed motion to dismiss under Section 1500 on the basis of the Supreme Court's 2011 decision in *Tohono*. In both instances, the claims survived dismissal due to the order of filing.

Case	Transferred	Survived (Diff. Facts)	Survived (Diff. Relief)	Survived (Order of Filing)	Dismissed on § 1500
Winnebago Tribe of Nebraska v. United States, No. 06-913L, 101 Fed. Cl. 229					X
2011 TOTALS	1	2	0	2	23
2010					
Vero Technical Support, Inc. v. United States, No. 10-575C, 94 Fed. Cl. 784					X
Jachetta v. United States, No. 10-105L, 94 Fed. Cl. 277					X
Trusted Integration, Inc. v. United States, No. 09-759 C, 93 Fed. Cl. 94 ⁸					X
U.S. Home Corp. v. United States, No. 09-63 C, 92 Fed. Cl. 401			X		
Mastrolia v. United States, No. 09-462C, 91 Fed. Cl. 369		X			
Zhao v. United States, No. 09-463C, 91 Fed. Cl. 95					X
Torre v. United States, No. 09-CV-0791* ⁹					X
2010 TOTALS	0	1	1	0	5
2009					
Low v. United States, No. 09-532C, 90 Fed. Cl. 447					X

⁸ This decision was affirmed in part and reversed in part, *see* 659 F.3d 1159 (2011).

⁹ An asterisk (“*”) denotes cases that we identified through an appellate opinion, but for which we were unable to locate any CFC decision on Lexis or Westlaw. In this case, the CFC decision was affirmed, *see* 2010 U.S. App. LEXIS 21073 (Fed. Cir. 2012).

Case	Transferred	Survived (Diff. Facts)	Survived (Diff. Relief)	Survived (Order of Filing)	Dismissed on § 1500
Woodson v. United States, No. 09-263 C, 89 Fed. Cl. 640					X
Berry v. United States, No. 08-330 C, 86 Fed. Cl. 750, 86 Fed. Cl. 24				X	
Haudenosaunee v. United States, No. 06-909L, 2009 U.S. Claims LEXIS 370				X	
United Keetoowah Band of Cherokee Indians v. United States, No. 06-936L, 86 Fed. Cl. 183 ¹⁰				X	
Lan-Dale Co. v. United States, No. 03-1956C, 2009 U.S. Claims LEXIS 16	X				X
Schmitt v. United States, No. 08-CV-917* ¹¹					X
2009 TOTALS	1	0	0	3	4
2008					
Griffin v. United States, No. 07-318C, 85 Fed. Cl. 179 ¹²	X				X
Swanson v. United States, No. 08-360 L, 2008 U.S. Claims LEXIS 502					X
Yankton Sioux Tribe v. United States, No. 05-1291 L, 84 Fed. Cl. 225 ¹³					X
Ramah Navajo Sch. Bd., Inc. v. United States, No. 08-19C, 83 Fed. Cl. 786					X

¹⁰ This case appears twice in this chart because the government filed a renewed motion to dismiss under Section 1500 on the basis of the Supreme Court's 2011 decision in *Tohono*. In both instances, the claims survived dismissal due to the order of filing.

¹¹ This decision was affirmed, *see* 373 F. App'x 66 (Fed. Cir. 2010).

¹² This decision was affirmed, *see* 2009 U.S. App. LEXIS 28381 (Fed. Cir., Dec. 28, 2009), and rehearing en banc was denied, *see* 621 F.3d 1363 (Fed. Cir. 2010).

¹³ This decision was affirmed, *see* 437 Fed. App'x 938 (Fed. Cir.2011).

Case	Transferred	Survived (Diff. Facts)	Survived (Diff. Relief)	Survived (Order of Filing)	Dismissed on § 1500
Nez Perce Tribe v. United States, No. 06-910L, 83 Fed. Cl. 186 ¹⁴				X	
E. Shawnee Tribe v. United States, No. 06-917, 82 Fed. Cl. 322 ¹⁵					X
Salt River Pima-Maricopa Indian Cmty. v. United States, No. 06-943L, 2008 WL 1883170				X	
Passamaquoddy Tribe v. United States, No. 06-942 L, 82 Fed. Cl. 256 ¹⁶					X
Moorehead v. United States, No. 07-654 C, 81 Fed. Cl. 353	X				X
Whalen v. United States, No. 07-707C, 80 Fed. Cl. 685					X
Shafer v. United States, No. 08-103 C, 2008 U.S. Claims LEXIS 463					X
Ak-Chin Indian Cmty. v. United States, No. 06-932 L, 80 Fed. Cl. 305				X	
2008 TOTALS	2	0	0	3	9

2007

Tohono O'Odham Nation v. United States, No. 06-944L, 79 Fed. Cl. 645 ¹⁷					X
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¹⁴ This case appears twice in this chart because the government filed a renewed motion to dismiss under Section 1500 on the basis of the Supreme Court's 2011 decision in *Tohono*. In both instances, the claims survived dismissal due to the order of filing.

¹⁵ At first, this decision was reversed and remanded, *see* 2009 U.S. App. LEXIS 20722 (Fed. Cir. 2009), with panel rehearing was denied over the dissent of Judge Moore, *see* 598 F.3d 1326 (Fed. Cir. 2010). But the Supreme Court subsequently granted a petition for certiorari, summarily vacated the Federal Circuit's opinion, and remanded for further consideration in light of *Tohono*, *see* 131 S. Ct. 2872 (2011). On remand, the Federal Circuit summarily affirmed the CFC's original order of dismissal. *See* 438 F. App'x 896 (Fed. Cir. 2011).

¹⁶ This decision was affirmed, *see* 426 F. App'x 916 (Fed. Cir. 2011).

Case	Transferred	Survived (Diff. Facts)	Survived (Diff. Relief)	Survived (Order of Filing)	Dismissed on § 1500
Schweitzer v. United States, No. 07-791C, 2007 U.S. Claims LEXIS 427					X
d'Abbrera v. United States, No. 06-427C, No. 07-365C, 78 Fed. Cl. 51	X	X			
Cooke v. United States, No. 06-748C, 77 Fed. Cl. 173	X	X	X		
Fiebelkorn v. United States, No. 07-18 C, 76 Fed. Cl. 438					X
Schrader v. United States, No. 06-384C, 75 Fed. Cl. 242	X				X
2007 TOTALS	3	2	1	0	4
2006					
Hall v. United States, No. 05-517C, 74 Fed. Cl. 391					X
Forsgren v. United States, No. 04-1223 L, 73 Fed. Cl. 135					X
OSI, Inc. v. United States, No. 04-1210C, 73 Fed. Cl. 39			X		
Chapman Law Firm Co. v. United States, No. 06-473C, 72 Fed. Cl. 14					X
Heritage Minerals, Inc. v. United States, No. 03-2228L, 71 Fed. Cl. 710		X			
Williams v. United States, No. 05-1123C, 71 Fed. Cl. 194			X		

¹⁷ This decision was reversed by the Federal Circuit, *see* 559 F.3d 1284 (Fed. Cir. 2009), *cert. granted*, 130 S. Ct. 2097 (Apr. 19, 2010) (No. 09-846). The Supreme Court subsequently reversed and remanded the Federal Circuit's decision, *see* 131 S. Ct. 1723 (2011).

Case	Transferred	Survived (Diff. Facts)	Survived (Diff. Relief)	Survived (Order of Filing)	Dismissed on § 1500
Firebaugh Canal Water Dist. v. United States, No. 05-262L, 70 Fed. Cl. 593					X
Hirel Connectors, Inc. v. United States, No. 05-1170 C, 70 Fed. Cl. 239					X
2006 TOTALS	0	1	2	0	5
2005					
De Leon v. United States, No. 05-606C, 69 Fed. Cl. 336					X
Smith v. United States, No. 04-1685C, 2005 U.S. Claims LEXIS 486 ¹⁸					X
Hansen v. United States, No: 02-21L, 65 Fed. Cl. 76				X	
Fire-Trol Holdings, LLC v. United States, 05-205C, 65 Fed. Cl. 32		X	X		
Snyder v. United States, No. 04-1006 T, 63 Fed. Cl. 762					X
2005 TOTALS	0	1	1	1	3
2004					
Young v. United States, No. 02-1368C, 60 Fed. Cl. 418				X	
Holloway v. United States, No. 03-1821C, 60 Fed. Cl. 254 ¹⁹					X

¹⁸ This decision was affirmed in a per curiam opinion, *see* 164 Fed. Appx. 995 (Fed. Cir. 2006).

¹⁹ This decision was affirmed, *see* 143 F. App'x 313 (Fed. Cir. 2005).

Case	Transferred	Survived (Diff. Facts)	Survived (Diff. Relief)	Survived (Order of Filing)	Dismissed on § 1500
Lan-Dale Co. v. United States, No. 03-1956C, 60 Fed. Cl. 299					X
Whyte v. United States, No. 03-856C, 59 Fed. Cl. 493					X
2004 TOTALS	0	0	0	1	3
2003					
Samish Indian Nation v. United States, No. 02-1383 L, 58 Fed. Cl. 114					X
Harbuck v. United States, No. 02-1829C, 58 Fed. Cl. 266					X
Breneman v. United States, No. 02-1854 L, 57 Fed. Cl. 571				X	
Agustin v. United States, No. 00-335C* ²⁰					X
2003 TOTALS	0	0	0	1	3
2002					
Frasier v. United States, No. 02-5164* ²¹					X
2002 TOTALS	0	0	0	0	1
2001					
Esch v. United States, No. 00-529 C, 49 Fed. Cl. 631					X

²⁰ This decision was affirmed, *see* 92 F. App'x 786 (Fed. Cir. 2004).

²¹ This decision was affirmed, *see* 67 F. App'x 594 (Fed. Cir. 2003).

Case	Transferred	Survived (Diff. Facts)	Survived (Diff. Relief)	Survived (Order of Filing)	Dismissed on § 1500
<i>2001 TOTALS</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>1</i>
2000					
Bailey v. United States, No. 96-666, 46 Fed. Cl. 187		X			
<i>2000 TOTALS</i>	<i>0</i>	<i>1</i>	<i>0</i>	<i>0</i>	<i>0</i>

ANALYSIS OF TOTALS: 2000-2010					
56 Cases Review	6 Transferred	5	5	9 of 56 (~16%) Survived on Order of Filing	38 (~71%) Dismissed
	4 of 6 (~66%) Dismissed Following Transfer	9²² of 56 (~16%) Survived on Different Facts and/or Different Relief			
		18 (~32%) Survived Motion to Dismiss			
ANALYSIS OF TOTALS: 2000-2012					
94 Opinions in 92 Cases ²³ involving 94 Claims ²⁴	9 Transferred	9	5	16²⁵ of 94 (~17%) Survived on Order of Filing	67 of 94 (~71%) Dismissed
	5 of 9 (~56%) Dismissed Following Transfer	12²⁶ of 94²⁷ (~13%) Survived on Different Facts and/or Different Relief			
		27²⁸ (~29%) Survived Motion to Dismiss			

²² One of these cases, *Cooke v. United States*, 77 Fed. Cl. 173 (2007), survived a motion to dismiss due to differences in both facts and relief sought.

²³ Two cases, *Nez Perce Tribe*, No. 06-910L, and *United Keetoowah Band*, No. 06-936L, twice survived Section 1500 motions on the basis of order of filing.

²⁴ In two cases, *Petro-Hunt, L.L.C. v. United States*, No. 00-512L, 105 Fed.Cl 37, and *Stockton East Water Dist. v. United States*, No. 04-541L, 101 Fed. Cl. 352, some claims were dismissed while others survived.

²⁵ The numerator here is 16 instead of 18 in order to prevent double-counting *Nez Perce* and *United Keetoowah Band*.

²⁶ In two cases, *Cooke v. United States*, 77 Fed. Cl. 173 (2007), and *Fire-Trol Holdings, LLC v. United States*, 05-205C, 65 Fed. Cl. 32 (2005), a plaintiff's claims survived a motion to dismiss due to differences in both facts and relief.

²⁷ Section 1500 applies to *claims*, not cases. We use 94 as the denominator here in order to capture accurate statistics and avoid the undercounting that would result from using the total number of cases reviewed (92).

²⁸ In one case, *Yakama Nation Housing*, No. 08-839C, a plaintiff's claims survived based on both different operative facts and the order of filing.